

### **1.2.2.2 Legal and Liability Issues**

A basic tenet of legal liability may compel a water utility that is made aware of a condition to take reasonable steps to eliminate or mitigate a hazardous condition. Publications such as this one that discuss the need for water utility security, and the materials published by EPA and other entities, could be considered notice that a hazardous condition may potentially exist. Once a vulnerability assessment is complete, the resulting recommendations also could be considered as notice of a dangerous condition. This notice could potentially result in liability if the recommendations are not addressed. In some cases, water utilities may be able to claim immunity based on their charters or municipal laws; however, some state laws waive or limit this immunity. A finding of negligence for damages stemming from a security breach generally would require:

- Knowledge or reasonable ability to foresee the damages
- A duty to the injured person
- Violation of the duty proximately causing the injury

Generalized warnings of terrorism against water utilities may not impact liability, but a warning relating to a specific plant or location could. The paraphrased axiom that, "the best defense is a well thought out and implemented security program," can be applied here. Court rulings have found that a water utility must exercise reasonable care in operating and maintaining its system. The definition of "reasonable care" is key in determining liability. As more water utilities implement security improvements, it could be argued that the definition of reasonable care is evolving to include installation of security systems that only a short time ago were rarely found in water systems. This document will include a two-tiered approach to security-related improvements using Basic and Advanced categories. A water utility can identify those measures that actually provide security improvements and that are a balance of the available resources, the utility's ability to execute the improvements, and ongoing operational aspects of the utility.

The Basic category is a reasonable care approach to reduce identified risk levels at the most critical assets. The Advanced category adds Best Business Practices to further lower risk levels across the water utility, but at increased resource expenditures.

Benchmarking the security-related improvements that utilities have made can help define a standard and provide guidance for other utilities struggling to determine which improvements to implement. Utility staff can evaluate common practices in the water industry as one approach to making decisions regarding the appropriate level of protection and investment for their systems.

### **1.2.3 Other Reasons**

Other reasons that water utilities have cited for the implementation of security systems include:

- Providing protection against non-terrorism threats such as vandals, low-level criminals, and disgruntled employees. Vandalism and theft are a problem for many utilities, especially those in larger urban areas—one that installing security systems can help to mitigate or prevent.
- Protecting employees from outsiders entering plants.
- Providing operational benefits beyond heightened security. For example, installing backup generators to provide power in the event of an attack on the power substation feed will also provide mitigation for power outages caused by other events, such as natural disasters or construction-related incidents. Similarly, as part of vulnerability assessments, utilities that add redundant pumps for pumping systems would significantly reduce process-related consequences if the main pumps are no longer operational.
- Assuming the responsibility to maintain public confidence in the water system and provide service to the community.